IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2006

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THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No. 24730 of 2006
& M.P.No.1 of 2006

A.Velayutham .. Petitioner

Vs

1. The Secretary to Government
   Home Department,
   Secretariat, Fort St. George,
   Chennai - 600 009.

2. The Transport Commissioner
   Transport Commissioner's Office
   Chepauk, Chennai - 5.

3. The Deputy Transport Commissioner
   O/o. Deputy Transport Commissioner
   Trichy.

4. The Regional Transport Officer
   O/o. The Regional Transport Office,
   Nagapattinam. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to order in R.No.90066/VI/2003, dated 24.01.2005 passed by the second respondent and the rejection order of the appeal in Letter No.118667/Tr.2/2006-3, dated 11.05.2006 passed by the first respondent and quash the same as illegal, improper, against law violation of principle of natural justice and thereby direct the respondents to pay back all service benefits to the petitioner.

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For Petitioner : Mr.M.V.Muralidaran

For Respondents : Mr.A.Edwin Prabhakar, GA

O R D E R

This writ petition has been filed challenging the order of the

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second respondent, dated 24.01.2005 and subsequent rejection of appeal by the first respondent, dated 11.05.2006, on framing certain charges against the petitioner, while he was working as Office Assistant at Regional Transport Office, Nagapattinam.

2. The second respondent after conducting enquiry has awarded the punishment of stoppage of increment for 5 years with cumulative effect. It was against the said order, the petitioner has filed an appeal before the first respondent on 07.12.2005. However, the first respondent while disposing of the appeal by the impugned order dated 11.05.2006 has rejected the same only on the ground that the appeal is time bared. A reference to the original order of punishment passed by the second respondent shows that the second respondent has in fact considered the judgment of this Court in C.A.No.633/1992, dated 20.11.1997, stating that the role of the petitioner was neither instrumental not supplemental in concealing the bribe amount and the name of the petitioner was not included in First Information Report or Mahazar. It is seen categorically that the petitioner was not involved in the charge. However, the second respondent having found that the enquiry officer has not disclosed about the evidence of P.W.4 and P.W.5, but merely stated that the petitioner has played a role in concealing the bribe amount, which is contrary to the decision of this Court in C.A.No.633 of 1992, has chosen to impose punishment of stoppage of increment for 5 years with cumulative effect.

3. It was against the said order, the petitioner has approached the appellate authority. The appellate authority without considering the merits of the case, rejected the case on technical ground of limitation. It is relevant to point out that even under the order of the second respondent, who is the original authority passing punishment, there is no indication of period of limitation within which appeal could be filed.

4. I am of the view that the impugned order of the first respondent, dated 11.05.2006 is to be set aside and the first respondent being the appellate authority to be directed to consider the case on merits, especially on the facts and circumstances as it has been stated and enumerated by the second respondent in original order of punishment.

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5. In my considered view, the mere rejection of appeal on the technical ground of limitation, especially on the facts and circumstances of the case does not meet the ends of justice.

6. In view of the same, the impugned order of the first respondent dated 11.05.2006 is set aside and the first respondent is directed to take back the appeal of the petitioner dated 07.12.2005 filed by him against the order of the second respondent, dated

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24.01.2005 and decide the same on merits and in accordance with law and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is ordered accordingly. No costs. Consequently, connected M.P.No.1 of 2006 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To
1. The Secretary to Government
Home Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Transport Commissioner
Transport Commissioner's Office
Chepauk, Chennai - 5.

3. The Deputy Transport Commissioner
O/o. Deputy Transport Commissioner
Trichy.

4. The Regional Transport Officer
O/o. The Regional Transport Office,
Nagapattinam.

+1cc to the Government Pleader Sr 36541
+1cc to Mr.M.V.Muralidaran, Advocate Sr 36713

NG (CO)
km/21.8.

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